

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH**

To

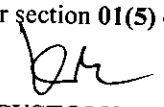
Dated: 30/06/2015

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/52036/2015-CU[DB] dated 14/05/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.


Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/329/2009	HI-TECH SEAL ENGINEERS, 2-M/31, VIGYAN NAGAR, KOTA -304007(RAJ.)

Name and Address of
Respondent

2	-C.C.E. JAIPUR I N.C.R.Building, Statue Circle, "C" Scheme, jaipur 302005.
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Copy To

3 Advocate(s) / Consultant(s):

**Vijai Kumar (Advocate)
C-2/2329, VASANT KUNJ,
NEW DELHI,
DELHI
110070**

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Delhi

6 Director Publications, Customs, Excise. I.P. Estate, Delhi

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

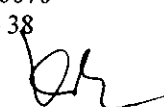
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

14 C.D.R. 15 Office Copy 16 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.**

Date of Hearing : 14.5.2015

Appeal No. ST/329/2009-CU(DB)

(Arising out of Order-in-Original No. 4(DK)/ST/JPR-I/2009 dated 31.1.2009 passed by the Commissioner (Appeals), Customs, Central Excise, Jaipur)

For Approval & Signature :

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s Hi-tech Seal Engineers

Appellant

Vs.

CCE, Jaipur-I

Respondent

Appearance:

Shri Vijai Kumar, Advocate - for the Appellant

Shri M.R. Sharma, D.R. - for the Respondent

Coram : Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

F. Order No. 52036 | 2015

Per R.K. Singh :

Appeal is filed against Order-in-Appeal dated 29.1.2009 which upheld the order in original dated 5.10.2007 except to the extent that the impugned demand of Rs. 2,20,951/- was reduced to Rs.2,01,733/- by treating the gross amount received as cum-tax amount.



2. Briefly stated, the facts of the case are as under:

It was gathered by Revenue that the appellant was providing maintenance and repair service to various service recipients as under:

"M/s Kota Thermal Power Station, Kota - Maintenance contract for regular attending steam leakage from various types of flange joints, valves/bonnets, valve glands, welding joints etc. in boiler and turbine area of M/s KTPS by on line leak sealing technique without taking shutdown of unit on the rates and conditions decided in advance.

M/s Suratgarh Thermal Power Station, Suratgarh - Maintenance contract for regular attending on line leak sealing services for M/s STPS, 5X250 MW units at STPS on the rates and conditions decided in advance.

M/s Shriram Rayons, Kota - Maintenance contract for regular servicing of flange joint leakage, main insulator valve, 8" main steam header gland of feed pump of discharge valve 2/1/2" and gland leakage of NDU steam by pass and boiler no. 3 at the rates decided in advance".

3. The primary adjudicating authority held that the service rendered was covered under the scope of maintenance and repair service and accordingly confirmed the aforesaid demand along with interest and penalties.

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4. The appellant has contended that it has been paying service tax w.e.f. 16.6.2005. Prior to 16.6.2005, it was not liable to pay service tax as the service rendered was only repair service and the contract was actually a repair contract and not a maintenance contract. It (i.e. the appellant) was required to repair various leaks etc whenever they happened and there was no provision in the contract which required them to undertake the maintenance work. The service recipients also certified that the contracts were for repair and not for maintenance. It elaborated as to how a maintenance contract is different from a repair contract.

5. The Ld. D.R. reiterated that the service rendered under the various contracts amounted to "maintenance and repair" service even prior to 16.6.2005.

6. We have considered the contentions of both sides. In terms of Section 65 (64) of Finance Act 1994, with effect from 1.7.2003 "maintenance and repair" mean any service provided by :

- (i) any person under a maintenance contract or agreement, or
- (ii) a manufacturer or any person authorised by him, in relation to maintenance or repair or servicing of any goods or equipment excluding motor vehicle.

Thus it is evident that only service provided by the appellant under a maintenance contract or agreement was liable to service tax w.e.f. 1.7.2003. The definition of "maintenance or repair" ^{It} ~~was~~ ^{was} [(Section 65(64))[^]] amended on 16.6.2005 as under:

"Maintenance and Repair" means any service provided by-

- (i) any person under a contract or an agreement, or
- (ii) a manufacturer or any person authorised by him, in relation to -
 - (a) maintenance or repair including reconditioning or restoration, or servicing of any goods or equipment, excluding motor vehicle, or
 - (b) maintenance or management of immovable property."

Thus it was only w.e.f. 16.6.2005 that a maintenance or repair service provided under a contract or agreement (as different from a maintenance contract or agreement) became taxable. The service recipients have certified that the contracts with the appellants were repair contracts and not maintenance contracts. Even the scope described in the contracts of work indicates that the appellant was required to attend to various leakages etc. CESTAT in the case of ***Commissioner of Central Excise Jaipur Vs. Bhiwadi cylinders private limited*** 2008 (11) STR 37(Tri-Del) has held that "maintenance is in the nature of preventive action. Admittedly, the respondent was only repairing old gas cylinders and for taking such

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repair they have entered into a rate contract. This contract for repair cannot be treated as a contract for maintenance". Similar view was held in the case of ***Speedways Tyre Service Vs. CCE, Ludhiana*** - 2009 (14) STR 339(Tri-Del). Board vide Circular No. B1/6/2005 - TRU dated 27.7.2005 had also stated as under :

16.4 Prior to 16.6.2005, maintenance or repair carried out under a maintenance contract or agreement was covered under service tax, Repair or servicing carried out under a contract other than a maintenance contract or agreement was not covered within the purview of service tax, Maintenance or repair, including reconditioning or restoration or servicing of any goods or equipment, except motor vehicle (which is taxable under the category of authorised service station), undertaken as part of any contract or agreement (not necessarily maintenance contract or agreement) is now liable to service tax under this category of taxable service. To attract service tax under this category, the contract or agreement need not necessarily be a maintenance contract/agreement.

7. The show cause notice in this case was issued on 6.12.2006. The fact that the appellant started paying service tax w.e.f. 16.6.2005 after the definition of "maintenance or repair" service was amended shows their bona fides. Even if the contracts under which the service was rendered were to be interpreted by some as maintenance contracts, the fact remains that it cannot be said to be unreasonable on the part of the appellant to think that these were not maintenance contracts and the fact that it started paying service tax with effect from 16.6.2005 when the words "maintenance contract" was substituted by the word "contract" lends credence to the appellant's contention regarding their bonafide belief. The matter

thus being interpretational and given the conduct of the appellant, there is hardly any scope for sustaining the allegation of suppression on the part of the appellant (in the light of the Supreme Court judgements in the cases of *Champhar Drgus Liniments* - 2002-TIOL-266-SC-CX and *Gopal Zarda Udyog Vs. CCE, Delhi* - 2005-TIOL-123-SC-CX-LB), in which case the demand would also be hit by time bar as extended period would not be invokable.

8. In the light of the analysis above we set aside the impugned order and allow the appeal.



(Justice G. Raghuram)
President



(R.K. Singh)
Member (Technical)

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